

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

EMPLOYERS-SHOPMENS LOCAL 516)
PENSION TRUST; CORAL)
CONSTRUCTION COMPANY)
RESTATED EMPLOYEE PROFIT)
SHARING PLAN & TRUST; WESTERN)
STATES HEALTH AND WELFARE)
TRUST FUND OF THE OPEIU,)

Plaintiffs,)

vs.)

TRAVELERS CASUALTY AND)
SURETY COMPANY OF AMERICA;)
FIDELITY AND DEPOSIT COMPANY)
OF MARYLAND; HARTFORD FIRE)
INSURANCE COMPANY; SEABURY &)
SMITH, INC. d/b/a MARSH)
ADVANTAGE AMERICA; WILLIS OF)
OREGON, INC.,)

Defendants.)

Case No. 05-444-KI

OPINION AND ORDER

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KING, Judge:

On July 6, 2005, I remanded this action to Multnomah County Circuit Court. Before the court is Plaintiffs' Motion for Award of Attorney Fees and Costs (#80). Plaintiffs seek a total award of \$118,879.27.

DISCUSSION

An order of remand may require payment of just costs and actual expenses, including attorney fees, incurred as a result of the removal. 28 U.S.C. § 1447(c). The court does not have to make a finding of bad faith on part of the removing party to support the award of costs and attorney fees. Balacorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102, 1106 n.6 (9th Cir. 2000).

I have a lot of discretion under the statute on whether to award fees and expenses. It has not been my practice to award fees if the removal was not frivolous and this removal was not. Both the procedural defect and the substantial federal question issues were complex.

On the practical side, if plaintiffs prevail in state court they can seek attorney fees under ORS 742.061. Fees to fight the removal could be awarded also. Even with the unredacted invoices, it is difficult for me to determine if any of the time spent was not solely for the remand motion and would be of assistance in other parts of the case. This would not be an issue under

the state statute. I acknowledge that not all of plaintiffs' claims are against parties that fall under ORS 742.061, but their primary claims against the insurers should. Plaintiffs' fees incurred to oppose the remand likely could not be apportioned between the insurer and non-insurer defendants because the arguments against the two groups did not differ.

Accordingly, I decline to award fees to plaintiffs.

CONCLUSION

Plaintiffs' Motion for Award of Attorney Fees and Costs (#80) is denied.

IT IS SO ORDERED.

Dated this 7th day of September, 2005.

/s/ Garr M. King
Garr M. King
United States District Judge